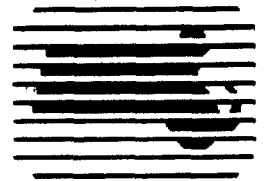


The Commonwealth of Massachusetts
Executive Office of Consumer Affairs

Cable Television Commission

100 Cambridge Street, Suite 2003
Boston, Massachusetts 02202



William F. Weld
Governor

(617) 727-6925

John D. Patrone
Commissioner

February 9, 1996

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By Federal Express

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
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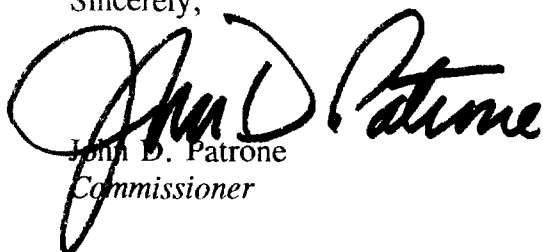
Re: CS Docket No. 95-174

Dear Sir or Madam:

Enclosed please find the original and nine copies of the Comments of the Massachusetts Cable Television Commission in the above-referenced matter. Pursuant to paragraph 35 of the FCC's November 28, 1995 Notice of Proposed Rulemaking, please forward the comments to each Commissioner.

Thank you for your attention to this matter.

Sincerely,


John D. Patrone
Commissioner

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992 - Rate Regulation
Uniform Rate-Setting Methodology

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CS Docket No. 95-174

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COMMENTS OF THE
MASSACHUSETTS CABLE TELEVISION COMMISSION

FEB 13 1996

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I. Introduction

The Massachusetts Cable Television Commission (the "Massachusetts Commission") is the state agency charged with regulating the cable television industry in Massachusetts in accordance with Massachusetts General Laws, Chapter 166A. The Massachusetts Commission's responsibilities include representing the interests of the citizens of the Commonwealth of Massachusetts before the Federal Communications Commission (the "FCC"). M.G.L. ch. 166A, § 16 (1990).

Effective October 7, 1993, the FCC certified the Massachusetts Commission under the 1992 Cable Act and the FCC's rate regulations as the state's rate regulator for the basic service tier ("BST") and associated equipment in Massachusetts. Pursuant to this certification, the Massachusetts Commission has rate regulation responsibility for 281 Massachusetts municipalities.

* Formally, the Massachusetts Community Antenna Television Commission under M.G.L. c. 166A, § 2.

Since its certification, the Massachusetts Commission reviewed the rates filed by 20 cable operators for these 281 municipalities. Because each Massachusetts municipality has a separate license, the Massachusetts Commission has substantial experience setting rates for cable operators serving multiple franchise areas. In light of the broad scope of rate-making responsibilities undertaken by the Massachusetts Commission, we have a direct interest in the outcome of this proceeding.

The passage of the Telecommunications Act of 1996 provides a host of opportunities for new competitive forces both within and without the cable television industry. As these opportunities emerge, the Massachusetts Commission believes it will become increasingly important for cable operators to be able to keep customers in broad segments of their markets apprised of both the changing nature of the services they offer and the rates for those services. The Massachusetts Commission also believes that current franchise area rate regulations impede cable operators' ability to efficiently deliver clear and timely rate information to both current and potential subscribers on a regional basis.

It is certainly difficult to predict the course of change resulting from deregulation. Nonetheless, a regulatory approach to regional rate-making which is both thoughtful and flexible should facilitate cable operators' ability to compete with alternative service providers, some of whom are free to establish and market services and rates which are not subject to regulation. Furthermore, the FCC's proposal for regional rate-making is particularly timely in light of a national trend toward industry consolidation. Most important, regional rate-making is a small

but meaningful step toward what will undoubtedly lead, in the long run, to lower prices and better cable service.

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We respond herein to the FCC's above-captioned Notice of Proposed Rulemaking (the "Notice"), requesting comment on an FCC proposal to allow cable operators the option of establishing uniform rates for similar service packages offered within the same region.

II. Establishment of Geographical Areas for Purposes of Uniform Rate-setting

The Massachusetts Commission strongly supports the FCC's proposal in paragraph 13 of the Notice that a cable operator be allowed to establish uniform rates in multiple franchise areas, regardless of whether the operator serves this area with one integrated cable system (i.e., one "headend") or with separate cable systems.¹

In paragraph 14 of the Notice, the FCC seeks comment on whether the proposed uniform rate structure should be limited to the state, county, or Area of Dominant Influence ("ADI") in which a cable system is located, or whether decisions relating to the geographic reach of a given uniform rate structure should be left to the individual cable operator. Given the Massachusetts

¹ The Massachusetts Commission also is convinced that geographical contiguity *per se* must not be a criterion. In Massachusetts, we have a number of instances where a single headend serves two municipalities which do not border each other.

Commission's rate-setting authority over cable operators serving multiple franchise areas in Massachusetts, we have had significant experience with this issue.

Our experience indicates that limiting uniform rate-setting to the geographic area covered by a single ADI would be unnecessarily restrictive. For example, the Town of Pittsfield, Massachusetts is within a New York State ADI and is therefore subject to must carry requirements imposed by New York broadcast affiliates. This circumstance leaves Pittsfield without any state or local news or information. Although an agreement was recently reached allowing the cable operator to carry a Massachusetts broadcast affiliate, operators would have a disincentive to enter into such arrangements in the future in the event regions were strictly linked to ADIs.

In Massachusetts, no fewer than five cable operators currently serve municipalities in two different ADIs using a single headend. Three of these operators already offer substantial rate uniformity and comparable service packages across these ADI boundaries. Additionally, at least six Massachusetts operators offer similar service packages at substantially uniform rates to subscribers in more than one county. Because the operations of cable systems in Massachusetts are not meaningfully affected by county boundaries, we believe that it would make little sense to limit uniform rate structures in Massachusetts to the geographic area of a county.

As noted above, the Massachusetts Commission regulates BST rates throughout the Commonwealth of Massachusetts. The nature and extent of our regulatory rate-setting authority

is established, at least in part, by state law. M.G.L. c. 166A, § 15. A rate-setting option which provided for uniformity of rates across state lines would, in all likelihood, result in instances in which the rate-setting jurisdiction of the Massachusetts Commission and out-of-state regulators would overlap. This could potentially create a host of regulatory and legal issues relating to the roles and responsibilities of all parties in the rate-setting process, including cable operators. Moreover, it could lead to unnecessary confusion on the part of both Massachusetts and out-of-state cable subscribers. We recommend, therefore, that at least with respect to the rate regulation process in Massachusetts, it would be reasonable to allow operators the option of uniform rate-setting on an intrastate basis, while restricting uniform rate-setting across state lines.

The Massachusetts Commission does, however, believe it would be reasonable, at this juncture, to explore the prospect of allowing for uniform *interstate* rate-setting, provided that it is limited to those jurisdictions in which all applicable local and state regulators and the regulated cable operator agree to a joint rate-setting process consistent with local, state and federal law.

Otherwise, cable operators should be free to establish their own regions for purposes of uniform rate-setting, consistent with the qualifying criteria for uniform pricing ultimately issued in the order.

III. Uniform Equipment Pricing

In paragraphs 17 and 19 of the Notice, the FCC seeks comment on, among other things, how a cable operator's regulated rates for equipment should affect the setting of uniform rates, and whether or not operators should continue to be required to follow existing equipment rate regulations.

Drawing upon our experiences in the Commonwealth, the Massachusetts Commission has found that equipment rates are particularly amenable to being set on a uniform basis. We have found that cable operators often have centralized facilities from which consumer equipment is supplied to many different franchises. The largest cable operator in Massachusetts, Continental Cablevision ("Continental"), has already established uniform statewide equipment rates. These statewide equipment rates were specifically approved by the Massachusetts Commission in rate orders issued on May 20, 1994. Likewise, in accordance with a social contract, the FCC approved regional equipment rates for Continental nationwide.

Based on our experience setting Continental's BST rates since the issuance of those orders, we have found that the existence of a uniform equipment rating scheme has simplified our role in the rate review process. Moreover, while franchising authorities occasionally raise concerns regarding variations in the age and quality of Continental equipment from franchise to franchise, the Massachusetts Commission is unaware of any significant adverse effects on subscribers resulting from Continental's move to statewide equipment pricing.

The Massachusetts Commission believes that operators who currently set equipment rates

by franchise should be free, at a minimum, to set uniform equipment rates within regions established under the order in this rulemaking. Based on the positive feedback we have received on statewide equipment pricing as instituted by the largest operator in the state, the Massachusetts Commission further believes that the FCC should consider allowing cable operators the option to establish uniform equipment pricing over regions which are *larger* than the regions in which uniform *programming* rates are established in accordance with this Order.

Finally, we would urge that the FCC consider allowing some form of interstate equipment rate uniformity. Consistent with our recommendation regarding interstate uniformity of programming rates, we believe this option should be limited to those jurisdictions in which all applicable local and state regulators and the regulated cable operator agree to a joint rate-setting process consistent with local, state and federal law.

IV. An Alternative Uniform Rate Methodology

Paragraphs 15 through 21 of the Notice present two alternative approaches for permitting cable operators to establish uniform rates for services to multiple franchise areas. Under the first approach, a cable operator would be required to adjust both BST and CPST rates to reflect changes resulting from the addition or deletion of channels necessary to structure uniform service tiers throughout the franchise areas served. Under this approach, BST and CPST rate uniformity

would be handled differently for each tier. First, BST rates for all franchise areas within a region would be reduced to the lowest BST rate offered in any one franchise area within that region. The operator would then have the right to recoup any lost revenues resulting from this levelling of BST rates by adding the full amount of those losses on to the CPST rates. After aggregating CPST rates and revenues for all franchise areas in the region, operators would then be permitted to separately "blend" CPST rates by averaging those rates on a per subscriber basis for all subscribers in the region.

The second approach proposed by the FCC would also require operators to adjust for rate changes resulting from the addition or deletion of channels necessary to structure uniform tiers. In this approach, *both* the BST and the CPST rates are separately blended using the same methodology adopted to calculate the blended CPST rate in the first approach. There is thus no need to shift costs from one tier to the other because revenue neutral uniform rates for each of the tiers are arrived at by calculating independent average rates for both tiers.

The Massachusetts Commission favors the second approach. There is some merit in artificially reducing BST rates to the rate charged to the lowest priced franchise in a region, particularly since it would shield state and local regulators from any fallout for BST rate increases which would otherwise result from uniformity. But reducing to the lowest BST rate only obscures cost-shifting to the CPST, purchased by the vast majority of cable subscribers; it does not eliminate the cost.

The Massachusetts Commission believes that averaging rates independently for both tiers

is, on an overall rating basis, the least disruptive of the two proposed methodologies. One advantage of the dual blending approach is that, of the two proposals, it would result in the least dramatic rate swing for the vast majority of cable subscribers. Conceptually, for most of those subscribers, the second approach would also probably be less confusing.

From the operators' standpoint, broad based rate averaging would surely be viewed as a less intrusive approach to achieving uniformity than would an approach which included even a one-time cross-subsidization feature. We would therefore expect that rate averaging would be less likely to disrupt, or run counter to, previously established business planning within the industry.

In the past, such disruptions may have been considered de minimis, or at least one of the acceptable regulatory costs of doing business as the sole licensed cable operator in a given community. In light of the recent enactment of the Telecommunications Act of 1996, however, the cable industry can no longer be viewed in isolation. The Massachusetts Commission believes that new rate regulation proposals should be instituted with an eye toward market entry by non-cable competitors who are often not subject to the vagaries of public rate regulation. The FCC should consider fully these anticipated market developments in selecting a uniform rating methodology which is both fair and reasonable.

Finally, the Massachusetts Commission is not entirely clear on the issue of how cable operators will initially be required to structure their uniform service tiers. We assume that both

FCC proposals would require operators to restructure all franchise area programming tiers to make them identical to the programming tiers offered in all other franchises within a rate region.

We also assume that this service uniformity requirement would apply to both channel counts *and* programming. If this is indeed the case, the Massachusetts Commission would propose what we consider to be a somewhat more flexible measure of service tier uniformity.

First, we believe it would be reasonable to allow operators to use franchise-specific *channel counts* as a comparative measure of substantial service tier uniformity amongst franchises in a rate region. As support, we note that the number of channels per tier provided by a given cable operator to a particular franchise area would appear to be a reasonable measure of the relative value of that offering as compared to the total number of channels provided per tier to other franchises.

If rate equity were the FCC's only consideration in selecting a uniform rate methodology, it would not necessarily be unreasonable to require operators to bring in line not only franchise channel counts, but channel-by-channel programming choices as well. However, many franchising authorities negotiate for community-specific programming they believe is most responsive to the local needs or preferences of those communities. It would obviously be difficult to satisfy those preferences if operators were required to match-up all *programming* on a franchise-by-franchise basis.

There are also many variations in franchise channel counts offered by any given cable

operator. To the extent those variations were large, operators would face the choice of either bringing them in to line, rating them separately, or moving to rate uniformity -- but not channel uniformity -- by foregoing some portion of the rate which would otherwise be charged the higher channel count franchises.

There are franchises, however, between which the channel count variations are not significant. We have reviewed the channel line-ups in several Massachusetts franchise areas in the same system and have found that many of these variations are relatively minor, resulting in channel counts which vary by a small number of channels. Given this fact, we would recommend that the FCC allow for some reasonable variance in channel counts from franchise to franchise within a region.

V. Treatment of Unregulated Communities

Paragraph 17 of the FCC Notice seeks comment on the issue of whether cable operators should be free to include the costs associated with unregulated franchise areas when calculating uniform rates. We agree with the FCC that all operators be given the option to include cost data from one or more unregulated franchises in a region within that region's uniform rate. The Massachusetts Commission also agrees with the FCC's position that operators be allowed to include those data only if the uniform rate is charged to any and all franchises whose costs were included in that rate.

VI. PEG and Other Franchise-Specific Costs

The Massachusetts Commission supports the FCC's policy goal of ensuring that a move to uniform rate-setting does not undercut the authority of local franchising authorities to negotiate franchise-specific terms in their agreements with operators. The FCC suggests this issue may be resolved by permitting the cable operator to itemize franchise-related costs, remove them from the uniform rate-setting formula, and charge subscribers separately by franchise to recoup them.

Our previous experience reviewing consolidated initial rate filings, however, suggests that this can often be a very difficult and burdensome process. In the past, operators subject to rate review have testified that they have been unable to isolate costs associated with local franchise obligations. For example, operators contend that production studios, video equipment and staff are often shared between their own local programming departments and PEG access organizations. Some operators have even jointly entered into such arrangements with multiple communities. More importantly, prior to rate regulation, cable operators had little incentive to track franchise obligation costs associated with PEG access separately from the costs of the operator's own voluntary local origination programming. Additionally, we have found that when existing PEG access and other franchise-specific costs are consolidated and spread across all subscribers in a franchise, the impact on individual rates is often very minimal.

Nevertheless, any uniform rating formula which included the costs of PEG access and other franchise obligations negotiated after the initiation of rate regulation would have the effect

of "burying" franchise-specific costs within a region-wide rate calculation. In our opinion, this would lead to two unwanted results: First, it would diminish the franchising authority's accountability for the costs of the obligations which it negotiates on behalf of subscribers. Second, it would force communities with lower cost franchise obligations to subsidize the more costly obligations of other franchises within the region.

Fortunately, in recent years both cable operators and franchising authorities have become much more aware of the costs of PEG access and other local franchise obligations. Within the context of recent renewal negotiations, we have witnessed a greater awareness on the part of franchising authorities of not only what subscribers want in the form of local programming and other services, but also what they are willing to pay for those services. Now that virtually all regulated cable operators in the state have been through at least one round of federal rate regulation, we believe they now have a much more definite sense of the costs associated with each of their local franchise obligations.

For these reasons, we recommend that all cable operators be required to itemize and remove all additional local franchise obligation costs imposed upon them after the initiation of rate regulation from the rate calculations for each of their franchises. For costs associated with franchise obligations existing prior to the initiation of rate regulation, we recommend they remain in the formula for purposes of calculating a uniform rate structure.

VII. Pilot Program

At the Massachusetts Commission, we have always tried to find alternative methods of regulation. Indeed, in 1994, we set up a pilot program to allow rate regulation by five selected municipalities, so we could later compare the results with our own state-wide efforts at rate setting. Our experience taught us that state regulation of rates is more efficient.

The idea and execution of a pilot program, however, remains a sound public policy goal. The municipalities involved in the experiment actively participated in the process, and when the year long trial period was complete, we had a hearty debate about the results. The process reinforced the notion that we should approach difficult regulatory issues creatively, rather than reflexively seeking to craft rules or design forms which simply add to everyone's administrative burdens.

In light of these experiences, we would like to go one step beyond mere paper suggestions we made earlier in these comments. We offer ourselves as a test state or "pilot program" for regional pricing, under which the FCC could allow the Massachusetts Commission to experiment with regional pricing under its second alternative approach--blending of both tiers--to see if the concept works.

We make this offer for many reasons, three of which stand out. **First**, in light of the considerable regulatory burdens now placed on the FCC within the next six months, this option offers the Commission the choice to continue reviewing the matter at a later time, where both the results of our experiment and the initial competitive fallout from the new Act would be more

in focus.

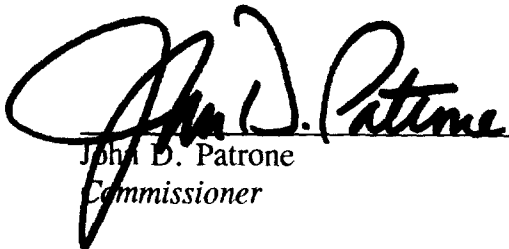
Second, given that we have set local rates at the state level for the past three years, we believe we would offer a wealth of experience to provide the necessary foundation for such an experiment.

Third, we already have considerable experience with setting state-wide equipment pricing with Continental Cablevision. This experience, along with the fact that Continental, Time Warner Cable and Cablevision Systems together control or will soon control 75% of the market in Massachusetts, would make it relatively easier for us to perform this experiment.

VIII. Conclusion

Whatever course the FCC decides to take on this issue, we once again commend the Commission for tackling difficult issues with creative solutions. We stand ready in the coming months to work with the FCC on this and the many other issues surely to arrive on its doorstep.

Respectfully submitted,



John D. Patrone
Commissioner

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